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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **DAVID MICHAEL LEON,**

14 Petitioner,

15 v.

16 **JAMES A. YATES, Warden,**

17 Respondent.
18

C07-5719 CRB

**DECLARATION OF COUNSEL IN
SUPPORT OF APPLICATION FOR
THIRD EXTENSION OF TIME TO
FILE RESPONSE**

19
20 I, JEFFREY M. LAURENCE, declare under penalty of perjury as follows:

21 1. I am a Deputy Attorney General for the State of California and am assigned to
22 represent respondent in this habeas corpus action. Respondent's answer or other responsive
23 pleading is due May 19, 2008, pursuant to this Court's November 19, 2007, order to show cause,
24 and this Court's March 14, 2008, order extending time. I am unable to meet this deadline, and
25 request an extension of time to file a response to the petition for the following reasons.

26 2. Petitioner is a state prisoner who was convicted of first degree murder with a gun use
27 enhancement, and he is serving an indeterminate sentence of 27 years to life. He contends: 1) his
28 right to due process was violated by the state court's finding that petitioner had failed to demonstrate

1 prejudice from a 17 year pre-accusation delay, 2) his Sixth Amendment right was violated by the
2 the state court's affirmance of the exclusion of third party culpability evidence, 3) the trial court
3 violated his constitutional rights by dismissing a juror during deliberations for lying under oath, and
4 4) he received ineffective assistance of appellate counsel.

5 3. The record in this case consists of approximately 671 pages of reporter's transcript
6 and 412 pages of clerk's transcript and will take additional time to review and examine this record,
7 give the fact-intensive nature of petitioner's claims.

8 4. On April 23, 2008, the California Supreme Court granted review in *People v. Story*,
9 S161044, on respondent's petition. I am counsel of record in *Story*, I prepared the petition for
10 review, and I am responsible for writing the opening brief in that case. The opening brief in *Story*
11 is currently due on May 23, 2008. This grant of review has necessitated that I set aside my pending
12 caseload to address the issues raised, and has caused unanticipated delays in my caseload
13 management.

14 5. I am currently the designated expert in the San Francisco branch of the California
15 Attorney General's Office on sentencing issues involving *Blakely v. Washington*, 542 U.S. 296
16 (2004). On April 20, 2008, I was assigned to handle the appeal in the Ninth Circuit in *Chioino v.*
17 *Kernan*, 08-15265, which implicates the constitutionality of California's sentencing scheme as
18 reformed in the wake of *Cunningham v. California*, 549 U.S. 270 (2007). The Deputy Attorney
19 General who originally handled this case is on maternity leave, and the case was reassigned to me
20 for purposes of the appeal. Because I was not the original attorney in that case, I am not familiar
21 with the record and will need to devote additional time to learning the background to complete the
22 briefing in that case. Our opening brief is currently due June 20, 2008.

23 6. The United States Supreme Court requested a response to a petition for writ of
24 certiorari in *Roundtree v. California* (07-7463). On February 22, 2008, I was assigned to prepare
25 the opposition on an expedited basis, which necessitated setting aside my pending caseload. I had
26 to devote several days to examining the record and legal issues in that case in order to prepare our
27 response.

28 7. In addition to the opposition to the petition for writ of certiorari, during the time I

1 have been assigned this habeas matter, I have filed a merit's brief in the California Supreme Court
 2 in *People v. Villa* (S151561). I also filed answers to federal habeas corpus petitions in *Heang v.*
 3 *Woodford* (C07-0980 MJJ) and *Young v. Runnels* (C05-119 JSW), and respondent's briefs in state
 4 appellate courts in *People v. Hughes* (A115308), *People v. Barron* (H031590), *People v. Franco*
 5 (H031757), *People v. Estrada* (H031846), *People v. Johnson* (A118685), *People v. Easterling*
 6 (A115281), *People v. Ekwueme* (H030655), *People v. Garelick* (H030976), *People v. Powell*
 7 (A114764), and *People v. Chavira* (A116473). Furthermore, over the course of the next 60 days,
 8 in addition to the merits brief in the California Supreme Court in *Story* and in the Ninth Circuit in
 9 *Chioino*, I must prepare and file respondent's briefs in state court in *People v. Daniels & Canfield*
 10 (A113184), and *People v. Canfield* (A118126), and prepare and file an answer in federal court in
 11 *Gilbert v. Felker* (C07-5987 TEH).

12 8. I have contacted counsel for petitioner, Julie Schumer, and she has no objection to
 13 this extension request.

14 Accordingly, I request that the Court grant respondent an extension of 60 days, to and
 15 including July 18, 2008, in which to file a response to the petition.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this 6th day of May, 2008 in San Francisco, California.

18
 19 /s/ Jeffrey M. Laurence

20 JEFFREY M. LAURENCE
 21 Deputy Attorney General
 22 Attorney for Respondent

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